

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

ROBERT HUBAL

vs.

**COOPERATIVE REGIONS OF
ORGANIC PRODUCER POOLS**

CIVIL ACTION NO. _____

NOTICE OF REMOVAL

TO: The Judges of the United States District Court
For the Middle District of Pennsylvania

Please take notice that Defendant Cooperative Regions of Organic Producer Pools (“CROPP”) by and through its counsel, Gibbons P.C., pursuant to 28 U.S.C. §§ 1441 and 1446, respectfully requests that this action, captioned Robert Hubal v. Cooperative Regions of Organic Producer Pools, Susquehanna County Court of Common Pleas, No. 2017-cv-701, be removed from the Court of Common Pleas of Susquehanna County, Pennsylvania, to the United States District Court for the Middle District of Pennsylvania on the grounds set forth below.

BACKGROUND

1. Plaintiff Robert Hubal, commenced this action in the Susquehanna County Court of Common Pleas on June 1, 2017, by way of a Complaint in which he alleges a breach of contract claim against CROPP.

2. CROPP was served with the Complaint on June 12, 2017.

3. Less than thirty (30) days have passed since CROPP was served, and less than one year has passed since the action was commenced. Therefore, removal is timely pursuant to 28 U.S.C. §1446(b).

4. A true and correct copy of the Susquehanna County Court of Common Pleas docket, Plaintiff's Complaint, dockets and all process and pleadings in this action are attached hereto as Exhibit "A" and are incorporated herein by reference.

5. This Court has jurisdiction over this matter under 28 U.S.C. §1332(a) because complete diversity of citizenship exists between the parties and the amount in controversy exceeds the sum of \$75,000, exclusive of interests and costs.

6. This Notice of Removal is being filed in the United States District Court for the Middle District of Pennsylvania, the District Court of the United States for the district and division within which the state court action is pending, as required by 28 U.S.C. §§1446(a) and 1441(a).

COMPLETE DIVERSITY OF CITIZENSHIP EXISTS BETWEEN PLAINTIFF AND THE DEFENDANT

7. Plaintiff Robert Hubal is now and was at the time of the institution of this case, a citizen and resident of the Commonwealth of Pennsylvania. *See* Plaintiff's Complaint ¶¶1–2, Exhibit "A".

8. As set forth in the attached Affidavit of Brion Hybertson, Defendant CROPP is and was at the time of the institution of this case, a cooperative association organized, incorporated and validly existing under the laws of the State of Wisconsin. In particular, CROPP is a cooperative association incorporated pursuant to Wisconsin Statutes Chapter 185.

9. As acknowledged in ¶3 of Plaintiff's Complaint, CROPP's principal place of business is at One Organic Way, La Farge, Wisconsin 54639. As a result, CROPP is not now, and was not at the time of filing of the Complaint, a citizen or resident of the Commonwealth of Pennsylvania. *See Affidavit of Brion Hybertson, Exhibit "B".*

THE AMOUNT IN CONTROVERSY REQUIREMENT IS SATISFIED

10. The amount in controversy requirement for removal is clearly satisfied in this case.

11. Plaintiff seeks damages arising out of an alleged breach of contract in the amount of \$275,000, exclusive of delay damages and costs. *See Ex. A at ¶ 14.*

12. Accordingly, without conceding that Plaintiff is entitled to any damages, it is facially apparent that the amount in controversy alleged in Plaintiff's Complaint exceeds the sum or value of \$75,000, exclusive of interest and costs. *See 28 U.S.C. § 1332.*

THE PREREQUISITES FOR REMOVAL HAVE BEEN SATISFIED

13. As set forth above, CROPP was served in this case on June 12, 2017.

This Notice of Removal is filed within thirty days of service upon CROPP and removal is timely. *See* 28 U.S.C. §1446(b).

14. The prerequisites for removal under 28 U.S.C. §1441 have been met.

15. The United States District Court for the Middle District of Pennsylvania embraces the county in which the state court action is now pending.

16. CROPP is filing written notice of this Removal with the Clerk of the State Court in which the action is currently pending pursuant to 28 U.S.C. §1446(d). Copies of the Notice of Filing of Notice of Removal, together with this Notice of Removal, are being served upon Plaintiff's Counsel pursuant to 28 U.S.C. §1446(d).

17. If any question arises as to the propriety of the removal of this action, CROPP requests the opportunity to present a brief and request oral argument in support of removal.

18. By filing this Notice of Removal, CROPP does not waive any defenses or rights.

WHEREFORE, Defendant Cooperative Regions of Organic Producer Pools requests removal of this case to the United States District Court for the Middle District of Pennsylvania, which is the District for the Susquehanna County Court

of Common Pleas in which said action is pending and prays that the filing of this Notice of Removal with this Court and the filing of the Notice of Removal with the Prothonotary of the Court of Common Pleas of Susquehanna County, shall effect the removal of said suit to the United States District Court for the Middle District of Pennsylvania.

GIBBONS P.C.

BY: s/Scott J. Etish

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DATED: June 30, 2017

CERTIFICATE OF SERVICE

I, Scott J. Etish, Esquire, hereby certify that a Notice of Removal has been filed with the Court and served on the following counsel via electronic and overnight mail on the following:

Joseph A. O'Brien, Esq.
Oliver, Price & Rhodes
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Clarks Summit, PA 18411
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GIBBONS P.C.

s/Scott J. Etish
Scott J. Etish

Dated: June 30, 2017